IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.9244 OF 2004

Shri. Suresh Gangaram Mahadik,
Age 32 years,
resident of Kadavali, Tal. Mahad,
Dist. Raigad.

....Petitioner.

Vs.

1. Union of India,
   through the Secretary
   Post and Telegraph Dept.
   Ministry of Communication,
   New Delhi.

2. Director Postal Services,
   Mumbai Region, Mumbai,
   Office of Post Master General,
   Maharashtra Circle, Mumbai.

3. Senior Superintendent Post Offices,
   Rzaigad Division, Alibagh.

4. Sub Divisional Inspector (Postal),
   Mahad 402301.

5. Mr. B.N. Shirsat,
   Post Mastder,
   Poladpur Post Office,
   Tal. Mahad, Dist. Raigad.

....Respondents.

Mr. V.N. Tayade for the Petitioner.
Mr. S.S. Pakale for the Respondent Nos. 1 to 4.

CORAM : H.L. GOKHALE AND
S.P. KUKDAY, JJ.
DATED : 7/6/2005

ORAL JUDGMENT:(Per H.L. GOKHALE, J.)

1. Heard Mr. Tayade in support of this petition.

Mr. Pakale appears for the respondents.

2. The petition seeks to challenge the order of the Central Administrative Tribunal dated 30.6.2004 in O.A.No.619 of 2002 which petitioner had filed against the order of his removal from the service under Post and Telegraph Department. The petitioner was removed from his service on 22.1.2001. That order was left undisturbed in the departmental appeal and subsequently in the original application filed before the CAT and therefore, this petition has been filed.

3. The allegation against the petitioner was that while working as Extra Departmental Branch Post Master at Village Kadawali in Taluka Mahad he defalcated certain amounts while incharge of saving bank of the postal department. The petitioner was served a charge-sheet specifying charges and the documents in support. The petitioner however, admitted his guilt by letter dated 13.11.2000 wherein he stated that he was mentally disturbed during the particular period i.e. 20.7.1999 to 4.8.1999 and thereby conduct alleged against him took place. In view of his own confession of the mis-conduct which was alleged against him, postal authorities deemed it not necessary to proceed with

the departmental enquiry and passed an order of removal. An internal appeal was filed and for the first time in the internal appeal filed on 2.4.2001 a point was raised that confession was made in view of the coercion made by the respondent No.5 i.e. Post Master, Poladpur Post Office. The appeal came to be dismissed by an order passed in October,2001. Against the order passed in internal appeal, the above referred application was filed before the Tribunal wherein also this point was raised and the same has been rejected by the Tribunal.

4. Mr. Tayade, the learned counsel appearing for the petitioner submitted that in the internal appeal as well as in the O.A. filed before the Tribunal this point was raised. We find it in Paragraph-9 of the O.A. A reply was filed to the O.A. and the same has been filed on behalf of all the respondents. It has been stated in Paragraph 10 that the concerned letter of admission dated 13.11.2000 was sent to the SPOs Raigad Division, Alibag by registered post. In Paragraph 12 also this position has been reiterated. Mr. Tayade, the learned counsel appearing for the petitioner submits that a specific allegation was made against the respondent No.5-Post Master, Poladpur Post Office

that he compelled the petitioner to give such a writing. He submits that he has not filed any separate reply of his own.

5. Mr. Tayade relied upon the Judgment of the Division Bench of Madhya Pradesh High Court reported in **2001(4) L.L.N. 1092** and particularly Paragraph 21 wherein the Division Bench has referred the Judgment of the Apex Court in the case of **Aher Raja Khima Vs. State of Saurashtra, reported in A.I.R.1956 S.C. 217** and held that the confession cannot be taken to have been voluntarily made where it is made under some threat, inducement or promise by a person in authority. Mr. Tayade therefore, submits that the Administrative Tribunal has erred in ignoring this aspect. Mr. Pakale, the learned counsel appearing for the respondents on the other hand points out that it is to be noted that the incident has taken place during the period from July to August,1999. The petitioner gave a letter of admission on 13.11.2000. This was sent by registered post. This was sought to be retracted in appeal which was filed on 2.4.2001 which is nearly one year and nine months after the incident. He submits that this is clearly an after thought and there is no reason to entertain any such submission

after such a lapse of time. He further points out that the reply filed by the respondents in the Administrative Tribunal was on behalf of all the respondents. That being so, it was not necessary for the respondent No.5 to file any separate reply. Mr. Pakale has also drawn our attention in Paragraph 18 of the reply, wherein the respondents have stated as follows :

> "The question of compelling or forcing the applicant to reply to charge-sheet by Shri. B.N. Shirsat does not arise, as he was not a beneficiary in this case. It is vital that he did not complain to any higher authorities against the so called force made from Shri. Shirsat".

6. That apart, the Judgment of the Apex Court in Aher Raja Khima Vs. State of Saurashtra (supra) was arising out of the prosecution under Section 302 of the Indian Penal Code and that was a case where the conviction was sought to be based on retracted confession. Obviously that could not be done. The facts of the present petition are totally different. In the present case, the petitioner has admitted the

guilt in writing whereby he induced the respondents to drop enquiry proceedings. Therefore, although the departmental enquiry was not continued, in view of the seriousness of the charges and the admission thereof, the petitioner could not be retained in service and order of removal came to be passed whereby his services were discontinued. In view of order of removal there is no stigma against the petitioner and in that case he could obtain other job if he wanted. In this case, nearly after two years the petitioner had sought to contend that the confession was under threats. In this connection as stated above, it is to be noted that said letter was sent by registered post. It is not possible to accept that the petitioner will keep quiet for a period of nearly two years and will not lodge any complaint to any higher authorities. Merely because he has sent such letter after lapse of nearly two years by registered post, it cannot be said that there was any fault on the part of the respondents in arriving at the decision of dropping departmental enquiry and issuing an order of removal in view of the confession. In our view, reply filed by the respondents is a composite reply and in Paragraph 18 there is clear denial which was filed on behalf of the respondent no.5 also. No reason to interfere.

Accordingly, petition is rejected.

(H.L. GOKHALE, J.)

(S.P. KUKDAY, J.)